

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
05-0040
2005-03-04 4:16
RECEIVED

In re:)	V.A. Docket No. 05-0002
)	
Michael H. Ruby, D.V.M.,)	
)	
Respondent)	Consent Decision
)	

This proceeding was instituted under the Animal Health Protection Act (7 U.S.C. § 8309 et. seq.), and the Requirements and Standards for Accredited Veterinarians promulgated thereunder, (9 C.F.R. § 161.1 et. seq.), by a complaint filed on September 6, 2005, by the Acting Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Act and regulations promulgated under the Act and regulation promulgated thereunder. The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admits to the Findings of Fact set forth below.

Respondent waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and
- (d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. Dr. Michael H. Ruby, hereinafter referred to as respondent, is an individual formerly doing business as an APHIS accredited veterinarian, whose mailing address is 20 Ocean Lake Road, Riverton, WY 82501.

2. The respondent is now, and at all times material herein was, a Doctor of Veterinary Medicine licensed by the State of Wyoming.

3. The respondent was, at all times material herein, pursuant to the provisions of the

APHIS regulations, 9 C.F.R. § 161.1 et. seq., an APHIS accredited veterinarian in the State of Wyoming from 1976 until January 6, 2003. Prior to January 6, 2003, respondent had his APHIS veterinary accreditation suspended on several different occasions: a 120 day suspension starting on December 1, 1979; a 60 day suspension in June, 1992; a 90 day suspension in January, 1997.

4. On January 6, 2003, respondent's APHIS veterinary accreditation was revoked for a period of two years. Respondent's revocation of his APHIS veterinary accreditation had been in effect for two years up to and including January 5, 2005. Pursuant to 9 C.F.R. § 161.1(b), after January 5, 2005, respondent could apply for reaccreditation of his APHIS veterinary accreditation pursuant to the application requirements and procedures for reaccreditation, 9 C.F.R. § 161.2(b) et. seq.

5. On or about January 24, 2003, respondent was issued a deferred prosecution by the District Court of Fremont County, WY, to a charge of forgery of APHIS Equine Infectious Anemia laboratory tests (APHIS-VS form 10-11), and was placed on supervised probation for a three year period; and was released to unsupervised probation on July 29, 2005.

6. On or about February 5, 2005, the APHIS Area-Veterinarian-in-Charge (AVIC) for the State of Wyoming received respondent's application for APHIS veterinary reaccreditation which was dated January 31, 2005.

7. On or about April 25, 2005, the APHIS AVIC for Wyoming notified the respondent of the receipt of respondent's application for APHIS veterinary reaccreditation dated January 31, 2005, along with notification to the respondent of detailed information regarding the

requirements and procedures for reaccreditation. The respondent was informed in that April 25, 2005 letter that in order for the respondent or any veterinarian to become reaccredited after revocation of one's veterinarian accreditation, a veterinarian must meet the same requirements as a newly accredited veterinarian and must also comply with all the requirements set forth in 9 CFR Part 161 for reaccreditation. The respondent was also informed in that April 25, 2005 letter that pursuant to the Standards set forth in 9 CFR parts 161, the APHIS AVIC for Wyoming would make a determination whether to recommend the respondent's reaccreditation or to recommend that respondent not be reaccredited. Further, that upon completion of the above determination regarding reaccreditation, the respondent's entire reaccreditation application packet along with all pertinent supporting documentation and the AVIC's determination with an explanation would be forwarded to the APHIS National Veterinary Accreditation Program Staff for its review and evaluation of respondent's reaccreditation application. After completion of this review and evaluation, the entire application packet would then be forwarded to the Deputy Administrator, Veterinary Services (VS), APHIS, for a final decision regarding the respondent's application for APHIS veterinary reaccreditation.

8. On or about May 6, 2005, the APHIS AVIC for Wyoming sent a letter to the Deputy Administrator, VS, APHIS, informing the VS Deputy Administrator that the AVIC was recommending that the respondent's application for APHIS veterinary reaccreditation be denied, for among other reasons: the respondent's long history of violations of the Requirements and Standards for accredited veterinarians along with the respondent's lack of improvement after his re-orientation in 1997 which clearly showed that the respondent does not possess the professional judgment and integrity required to carry out the duties and responsibilities of an APHIS accredited veterinarian.

9. In late May, 2005, the APHIS National Veterinary Accreditation Program Manager sent a memorandum to the Deputy Administrator, VS, APHIS, informing the VS Deputy Administrator that the APHIS National Veterinary Accreditation Program Manager was likewise recommending that the respondent's application for reaccreditation be denied.

10. In a letter dated June 13, 2005, the Deputy Administrator, VS, APHIS, informed the respondent that after a thorough review of all of the relevant information, the VS Deputy Administrator had determined that the respondent did not meet the requirements for reaccreditation as outlined in 9 CFR 161.2(b). The VS Deputy Administrator's June 13, 2005 letter further explained that his denial of the respondent's application for reaccreditation was based on, among other things, the fact that the respondent's APHIS veterinary accreditation has been suspended twice before and, more recently, it had been revoked for a 2 year period. In addition, there are official documents that establish that the respondent continued to do APHIS veterinary accredited work after revocation of the respondent's accreditation even though the respondent knew that he was not accredited at the time. The Deputy Administrator, VS, APHIS, evaluated the respondent's entire file and determined that the respondent's utter disregard for the required Standards of an APHIS accredited veterinarian demonstrated a clear lack of the professional integrity necessary to faithfully fulfill the duties of a Federally accredited veterinarian as stated in 9 CFR 161.2(b)(iii). Accordingly, the VS Deputy Administrator made the determination to deny the respondent's application for APHIS veterinary reaccreditation.

11. In the same letter dated June 13, 2005, the Deputy Administrator, VS, APHIS, informed the respondent that if the respondent disagreed with the VS Deputy Administrator's

decision to deny the respondent's application for veterinary reaccreditation and desired to have a formal hearing before an administrative law judge, the respondent should contact the APHIS National Veterinary Accreditation Program Manager to initiate the process of having the Office of General Counsel, USDA, prepare and file a formal complaint regarding the denial of the respondent's APHIS veterinary reaccreditation.

12. On about July 14, 2005, the respondent contacted by telephone the APHIS National Veterinary Accreditation Program Manager and informed him that the respondent did want to have a formal hearing before an administrative law judge regarding APHIS's denial of his APHIS veterinary reaccreditation. On or about August 5, 2005, the APHIS National Veterinary Accreditation Program Manager received a written request from the respondent requesting a formal hearing before an administrative law judge regarding APHIS's denial of his APHIS veterinary reaccreditation.

13. Respondent filed his Answer to the complaint on October 17, 2005, generally denying the factual allegations and specifically denying that he has a long history of violations of the requirements and standards for accredited veterinarians, denying that he has shown a lack of improvement and that he lacks professional judgment and integrity. Respondent affirmatively alleged that most violations, to the extent that they occurred as alleged, were under the supervision of a duly licensed, qualified and APHIS accredited veterinarian. Even so, Respondent acknowledges that he has since learned that the alleged violations were contrary to approved practices.

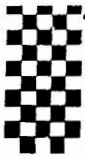
14. Respondent claims he has lost his primary source of income as a veterinarian as a result of the revocation of his APHIS license four years ago and the denial for reaccreditation two years ago. He further claims that he practices in a rural agricultural area that provides limited opportunity to practice other types of veterinary medicine.

Conclusions

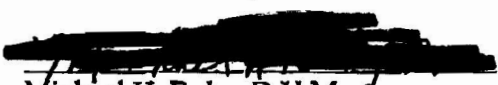
The respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.


Order


The respondent's, Michael H. Ruby, D.V.M., application for APHIS veterinary reaccreditation dated January 31, 2005, is denied. Such denial of Michael H. Ruby's application for APHIS veterinary reaccreditation shall be in effect for a period of one year from the effective date of this Consent Decision. At the conclusion of the one year period of the denial of his reaccreditation, respondent Michael H. Ruby, D.V.M., if he so chooses, can apply for reaccreditation. However, such allowance to apply for reaccreditation at the end of the one year denial of his reaccreditation in no way or manner means or signifies that APHIS will in fact approve such application for reaccreditation from the respondent at that time.



This Order shall become effective when signed and issued by the Administrative Law Judge.


Michael H. Ruby, D.V.M.
Respondent


JAMES A. BOOTH
Attorney for Complainant


Michael S. Messenger
Attorney for Michael H. Ruby, D.V.M.

Issued this 3rd day of MAY, 2007

at Washington, D.C.


Administrative Law Judge